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OCT 2 1981
ALEXANDER L. STEVAS,
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No. 80-1925

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

UNITED TRANSPORTATION UNION,

Petitioner,

v.

LONG ISLAND RAIL ROAD COMPANY AND METROPOLITAN TRANSPORTATION AUTHORITY,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

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BRIEF OF THE NATIONAL LEAGUE OF CITIES AS AMICUS CURIAE IN SUPPORT OF THE RESPONDENTS

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D.C.

QUESTION PRESENTED

The Long Island Rail Road Company is a common carrier, owned and operated by an agency of the State of New York, and is primarily engaged in commuter service. The question presented is whether the Railway Labor Act may, consistent with the Tenth Amendment, secure to employees of the railroad the right to strike denied them by state law.

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INTERESTS OF THE AMICUS CURIAE

This *amicus curiae* brief of the National League of Cities is submitted with the written consent of all the parties. The letters of consent are on file with the Clerk. Rule 36.2.

The National League of Cities ("NLC") is an instrumentality of United States cities established in 1924 and organized in 1933 as an Illinois not-for-profit corporation to assist municipalities in performing their functions. Its membership includes direct member cities, state leagues of municipalities and state league member cities. In all, almost 15,000 cities and municipalities, both large and small, are members of and participate in the activities of NLC. The functions of NLC as authorized in its Bylaws include "the safeguarding of the interests, rights, and privileges of municipalities." It is in this capacity that NLC offers its views in the case at bar.

Once again, this Court is called upon to clarify the circumstances under which state laws governing conditions of employment for state public employees and associated state actions as employer will be protected from federal interventions based on the federal authority to regulate commerce between the states. Accordingly, the issues before this Court involve the structures of Constitutional federalism and how these organizing principles may be applied to determine in this case whether employees of the Long Island Rail Road can or cannot strike. The question is which level of government, federal or state, should have the authority to make and enforce that policy decision, and by extension, under our federal system which level of government will be held accountable for the consequences of that decision.

NLC's interest in this controversy stems from its concern that states and cities must retain reasonable direction and control over the affairs of state and municipal instrumentalities. Direction and control includes the authority to establish the basic conditions of employment (as exemplified by wages, hours, labor relations and the right to strike) in state and municipal agencies. To function effectively, and to be understood and supported by its citizens, the organizing principles of our federal system of governance requires a reasonable association between authority and responsibility. If state sovereignty has any import today, it must mean that states, as responsible governmental entities, retain the authority to determine, for example, if state employees shall be accorded the right to strike.

Moreover, in the view of NLC, providing essential local transportation means for the commuting public is the kind of governmental service which is characteristic of state and local governments and should be so regarded in the Constitutional sense. Therefore, the function

should be protected from unjustified federal interference. Federal interventions into the substance of local government should not be condoned with vague explanations that the activity in question does not merit Constitutional protections because it is not "traditional" or not sufficiently governmental or otherwise is not a sufficiently normal local governmental function. State and local governments should be permitted to exercise their authority in a manner which they and their citizens deem to be in the public interest, in the absence of some overweening federal interest. This, in the federal system, is the essence of and justification for local government. *See, e.g., Village of Euclid* v. *Amber Realty Co.*, 272 U.S. 365, 389 (1926).

And finally, NLC is concerned that the principles espoused by the Petitioner herein and those endorsed by the United States as *amici curiae*, namely, that New York State is in the railroad business and as such is subject to unrestrained federal Commerce Clause regulation, if adopted by this Court, would serve in due course further to undermine the ability of states to perform adequately their roles and responsibilities in the federal system.

Accordingly, NLC seeks to put the controversy before the bar into a larger context and to demonstrate that the salient issues before the Court involve, in the first instance, the ability of states and municipalities to function in the federal system and, equally important, the ultimate capacity of that federal system to perform effectively for all the people.

STATEMENT OF CASE

This case arose from a labor dispute between employees of the Long Island Rail Road Company ("LIRR"), represented by Petitioner, United Transpor-

tation Union ("UTU"), and Respondents LIRR and the Metropolitan Transportation Authority ("MTA"), the New York State agency responsible for the LIRR. Petitioner UTU sought declaratory relief establishing that LIRR employees are covered by the Railway Labor Act ("RLA"), 45 U.S.C.A. §151 *et seq.*, (1972 & Supp. 1981) and accordingly possess the right to strike established therein. Petitioner also sought injunctive relief barring enforcement of New York's "Taylor Law," N.Y. CIV. SERV. LAW §200 *et seq.*, (McKinney 1973 & Supp. 1980), which prohibits public employee strikes, on the ground that the RLA preempts the state law. The District Court granted summary judgment to Petitioner (Pet. App. 29a-46a) but the Court of Appeals reversed (Pet. App. 1a-25a), holding that application of the RLA to secure the right to strike to the LIRR's employees is inconsistent with the Tenth Amendment.

The Court of Appeals found the LIRR to be a common carrier and a wholly owned subsidiary of a state agency. The Petitioner and the United States government as *amicus curiae* argued that the railroad as a carrier was subject to the federal law. The MTA and the LIRR said that as a state-owned and operated agency the railroad and its employees were Constitutionally protected from federal incursions in the circumstances and subject only to the state law.

The question before this Court comes down to whether state governments or the federal government will control the labor relations and the right to strike of state public employees working for a state instrumentality operating a railroad. The issue is whether state policy or federal policy will rule under the current precepts of federalism and the Tenth Amendment.

Because the case at bar involves questions of Constitutional federalism and the structures of the federal system, NLC urges this Court that its decisions must be made in the light of a realistic appraisal of the current characteristics of the federalism of the 1980's.

Succinctly put, it is the view of the *amicus* that in recent times our federal method of governance has been seriously weakened and endangered by the persistent intrusiveness of the federal government, a government which characteristically intervenes in matters of state and local government concern without accepting responsibility for the results of that intervention. For example, in the case at bar will the federal government assume responsibility and respond to the Long Island commuters if the state employees of the LIRR strike when state policy and state law preclude such a strike? In the federalism of the 1980's, federal intervention without accountability for the consequences is undermining the effectiveness of our federal system.

The grounds for NLC's concern for the efficacy of the federal system is well documented and articulated by the Advisory Commission on Intergovernmental Relations ("ACIR") in its recent ten-volume analysis of and report on the national government's role in the federal system.[1]

The ACIR report characterizes federalism in the 1960's as a relatively simple and cooperative arrange-

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[1] In 1976 Congress directed the ACIR to prepare a major multipart study of the American federal system. The findings summarized in this brief have been distilled from the ACIR's final volume, X Advisory Commission on Intergovernmental Relations, *An Agenda for American Federalism: Restoring Confidence and Competence*, (A-86 June, 1981).

ment. Few, if any, municipal functions and only about one-half of the states' responsibilities, were touched by federal programs. The legislative process of the day reflected a capacity to differentiate between most local and several state functions and what, politically, was deemed to be of national concern. Dual federalism, with its intergovernmental separation of functions, finances and personnel was found by the ACIR still to be an operational fact in the 1960's.

The federalism of the 1980's, according to the ACIR, and NLC agrees, is remarkably different. Over the intervening years there has been a dramatic expansion of the policy-making role of the federal government in domestic affairs. And the federal methods, cooperative in name, have become co-optative and even antagonistic in practice.

The ACIR report expresses its concern, not for the intricacies and inconsistencies of the evolving new federal arrangement, but for how these changes have combined to produce an interpretation and application of the Constitutional principle of federalism wherein the adaptive and workable features of the inherited system are in danger. Dysfunctionality, the ACIR finds, has been substituted for functionally and rigidities for flexibility. These systemic transformations have become the focus of the ACIR's apprehensions.

The changes which have accumulated in the past two decades, the ACIR avers, have produced neither a dual nor a cooperative brand of federalism, but an increasingly dysfunctional form of federalism. Contemporary intergovernmental relations, the ACIR's research finds, have become more pervasive, more intrusive, more unmanageable, more ineffective, more costly, and above all, more unaccountable.

It is the view of the *amicus* that these characteristics of the federalism of the 1980's are material to the questions presented. This is the context in which the decision of this Court must be made.

SUMMARY OF ARGUMENT

At issue is whether federal law can authorize state government employees to strike when state law prohibits a strike. The question presented is not whether the Congress can regulate a state-owned and operated railroad, LIRR, but whether the federal Railway Labor Act may regulate the state as an employer and decree conditions of employment for state employees working for the LIRR.

As the Court of Appeals determined, the principles enunciated by this Court in *National League of Cities* v. *Usery*, 426 U.S. 833 (1976) and clarified in *Hodel* v. *Virginia Surface Mining and Reclamation Association, Inc.*, 49 U.S.L.W. 4654 (U.S. June 15, 1981) preclude the use of the federal Commerce Clause power to infringe upon the sovereignty of state governments and to undercut their ability to perform their Constitutional role in the federal system.

Providing necessary transportation means for goods and people is a traditional service of state governments and their instrumentalities commencing with colonial times. Determining basic terms of employment for state employees engaged in providing transportation services or otherwise is a protected attribute of state sovereignty. And state decisions involving the need to operate a railroad and the employment terms for state employees working on that railroad constitute essential decisions regarding the conduct of integral government functions and are protected as much from federal interference under *National League of Cities.*

Finally, in the case at bar, the interests of the state in these matters far outweigh the interests of the federal government. Accordingly, the decision of the Court of Appeals should be affirmed.

ARGUMENT

I. The Rationale Of *National League Of Cities v. Usery* Requires That The Decision Of The Court Of Appeals Be Affirmed.

At issue is whether federal law can authorize state government employees to strike when state law prohibits a strike. The objectional feature of the RLA is not that it regulates a state-owned and operated railroad, but that the federal law regulates the state as an employer. The question is not whether under its power to regulate commerce among the states, the Congress has the authority to regulate the LIRR.[2] When the federal law impacts

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[2] "Whether a transportation agency is a common carrier depends not upon its corporate charter or its declared purpose, but upon what it does." *United States* v. *California*, 297 U.S. 175, 181 (1936). (Citing, *United States* v. *Brooklyn Terminal*, 249 U.S. 296, 304 (19___)). Accordingly, a state-owned and managed railroad which operated in the San Francisco harbor area was held to be a common carrier subject to fines for failure to use safety equipment (automatic couplers) required by the federal Safety Appliance Act. The Court rejected the argument that the federal requirements infringed on state sovereignty. However, these federal safety requirements do not appear to be a serious intrusion upon either state sovereignty or the states' ability to function effectively in the federal system. In 1957, in a suit brought by employees of the same state-owned railroad, the Court declared that the railroad's labor relations where controlled by the federal Railway Labor Act. *California* v. *Taylor*, 353 U.S. 553 (1957). Under the federalism of the 1950's, the Court gave short shrift to state sovereignty as a moving consideration. By operating a common carrier, the state relinquished its sovereignty to the federal government. 353 U.S. at 568. Moreover, the Court found the employees of the state railroad to be something more than state employees; they were members of the railroad fraternity. "The railroad,

directly on the state as an employer, the question is whether, under the principles of federalism as exemplified by the Tenth Amendment, the authority of the federal government to regulate the LIRR has been exercised in a fashion that impairs the States' integrity or their "ability to function effectively in a federal system." *Fry* v. *United States,* 421 U.S. 542, 547 n.7 (1975).

The federal regulation in question impinges on the activities of a state agency which is providing basic, essential and traditional services to the citizens of the State; the regulation aspires to control fundamental employer-employee relations between the state and its employees in derogation of the states' inherent sovereignty in such matters; the regulation thereby forecloses the state from making essential decisions regarding the conduct of integral governmental functions.

The Court of Appeals has ruled in these circumstances that under the rationale of *National League of Cities,* the federal government may not force upon New York State federal choices with respect to the right of state employees to strike. The *amicus* urges this Court to affirm.

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world for which the Act was designed has been described as 'a state within a state.' Its population of some three million, if we include the families of workers, has its own customs and its own vocabulary, and lives according to rules of its own making. . . ." 353 U.S. at 565. *But see: Amell* v. *United States,* 384 U.S. at 158. The rulings in *California* v. *Taylor* are at least dated; they have little relevance to the LIRR, given the characteristics of federalism in the 1980's. Today there is little reason to conclude that by operating a public mass transit system to meet the needs of its citizens, a state must forego to the federal government its Constitutionally protected sovereignty and its authority over decisions regarding the conduct of integral state functions.

A. *Responsibility For Matters Relating To The Transportation Of Goods And People Is A Primary And Traditional Responsibility Of States And State Instrumentalities.*

Increasingly, our courts now comprehend that operating public mass transit systems is a normal activity of state and local governments. That such a system may be defined by the federal government as a "carrier" does not change the fundamental character of the system.

Since *National League of Cities,* federal courts have been required to rule on whether providing transportation facilities and services is a traditional function of state and local governments and, therefore, not subject to the strictures of the federal Fair Labor Standards Act, 29 U.S.C.A. § 201, *et seq.*, (1976). Most have concluded that concern for the transportation needs of citizens and the operations of transportation facilities, such as municipal airports and public mass transit systems to serve these needs, are traditional concerns and traditional functions of states and their instrumentalities. *Amersbach* v. *City of Cleveland,* 598 F.2d 1033 (6th Cir. 1979); *Alewine* v. *City Council of Augusta,* 505 F.Supp. 880 (S.D. Ga. 1981); *Francis* v. *City of Tallahassee,* No. 79-446 (2d Cir. Dec. 8, 1980); *Dove* v. *Chattanooga Area Regional Transportation Authority,* C.A. No. 1-80-249 (E.D. Tenn. July 21, 1981). *Contra, Joiner* v. *City of Macon,* C.A. No. 79-287-MAC (M.D. Ga. April 27, 1981).

From the beginning in this country, municipal governments, initially in their own right and subsequently as instrumentalities of state governments,[3] were required to

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[3] During the colonial period some twenty-four municipal corporations received charters as cities, most of which were confirmed after the Revolution by the legislature of the state in which the city was located. 1 E. McQuillin, *Municipal Corporations,* §1.09, 11 (3d Ed. 1970).

concern themselves with the movement of goods and people as a means of assuring the safety, happiness and prosperity of their citizens. The perpetuation of even the relatively simple colonial economies demanded mobility for individuals and their effects. Thus colonial boroughs were accorded powers concerning such matters as the regulation of the use of public ways, setting limits to the speed at which a horse could be ridden or driven in the streets, restricting the size of wagons and otherwise addressing facets of colonial transportation as they existed in those times.[4]

As state and municipal economies evolved, transportation-related demands on state and local governments grew more complex. In due course, in addition to functions associated with building, maintaining and regulating the use of alleys, streets and public highways, these governments found themselves concerned with entirely new transportation entities such as street railways, elevated, surface and underground subways and other dimensions of mobility as well, such as conduits for the transportation of water, gas and electricity.[5]

And later, when the administrative demands of governance required more organized and more comprehensive planning, state and local governmental planning objectives traditionally encompassed not only streets and transportation systems but also all the elements needed to provide convenient, smooth-flowing and efficient transportation of persons and things.[6] Thus, state and local governments were required, over time, to produce facilities for the transportation needs of pedestrians, au-

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[4] *Id.* §1.14 at 15.

[5] *Id.* § 9.05 at 631.

[6] *Id.* §1.73 at 108.

tomobiles, buses, trains, streetcars, subways, steamships and airplanes. The future will bring new demands.

The point is obvious and inescapable. State and local governments seeking to protect and to enhance the welfare of their citizens must do whatever may be necessary to meet the transportation requirements of their citizens and the transportation needs of the changing local economies upon which the citizens depend for their livelihoods. Consequently, when the State of New York was faced with the possible collapse of the Long Island Rail Road, an element cirtical to the Long Island transportation network, the State had no alternative but to step in and do what, in its sovereign wisdom, it deemed necessary to facilitate the flow of goods and people so essential to the welfare of that area.

In light of the historical evolution of the role and associated responsibilities of state and local governments with respect to the movement of people and goods, and in the face of the transportation needs of the residents of Long Island, it seems clear and beyond argument that when the State of New York took over the LIRR, by providing the transportation services essential to the welfare of its citizens, it was performing a basic, essential and traditional function of state government.

B. ***Authority To Regulate The Right Of State Employees To Strike Is Indisputably An Attribute Of State Sovereignty.***

This Court has said that "[o]ne undoubted attribute of sovereignty is the States' power to determine the wages which shall be paid to those whom they employ to carry out their governmental functions. . . ." 426 U.S. at 845. Similarly, the determination of whether or not or in what circumstances an employee of the State may strike also clearly is a matter which is the State's alone to determine. Such a determination is central to the relationship between the State, as employer, and State employees.

The claim of the Petitioner, supported by the United States as *amicus curiae*, that the ability of state employees to strike must be controlled by federal rather than state law is not without its ironies. Under federal policy, to strike is not a privilege which, in its sovereign wisdom, the federal government accords federal employees. 5 U.S.C.A. § 7311(3) (1980). Indeed, a strike by a federal employee is a crime, 18 U.S.C.A. §1918 (1970), and an appointment affidavit is required of federal employees to implement this federal no-strike policy. 5 U.S.C.A. § 3333 (1977). *See: United Federation of Postal Clerks* v. *Blount*, 325 F.Supp. 879 (D. D.C. 1971) *aff'd*, 404 U.S. 802 (19 ___). New York State, probably moved by the same considerations as the federal government, also has promulgated similar no-strike rules for its employees. Taylor Law, N.Y. CIV. SERV. LAW §§ 200-214 (McKinney 1973 & Supp. 1980). Nevertheless, Petitioner urges that the same sovereign privileges with respect to its employer-employee relations exercized by the federal government should be denied the state government. The Court of Appeals was not persuaded.

In its brief, Petitioner emphasizes that the LIRR is a carrier within the meaning of the Railway Labor Act. This fact, however, does not operate to change the nature of the relationship between the employees of the railroad and the state. The state, not the railroad, is the employer of the railroad workers. They are public employees, not railroad employees. *See: Amell* v. *United States*, 384 U.S. 158 (1966), where this Court, regarding federal employees working aboard government vessels, considered whether "these seafaring petitioners are more appropriately classified as federal workers or as mere seamen," 384 U.S. at 160, and concluded they were federal employees because they were so regarded by the Congress.

The dictates of state sovereignty suggests that the privilege to classify their employees as employees of the State, and to specify that employees may not strike, should be accorded the State in the case at hand.[7]

C. *Federal Displacement Of States' Employer-Employee Relationship Impermissibly Interferes With Integral State Functions.*

As explained above, coping as practical with the transportation needs of the public is a traditional and essential service of state and local governments. In discharging this responsibility, the State of New York found it necessary to take over the operation of the LIRR and, in due course, as a response to labor difficulties, to convert the LIRR from a stock corporation to a public benefit corporation whose employees would be subject to the Taylor Law as public employees of the State. In so doing, the State was exercising its choices as to how essential decisions regarding the conduct of integral governmental functions were to be made.

Both the decision to respond to the Long Island transportation crisis by acquiring the LIRR, and the decision which decreed the ultimate organization of the LIRR in order to carry out state transit policy, were normal acts of state government and the exercise of state sovereign authority in these matters. To apply to such state acts the requirements of the federal Railway Labor Act, as the Petitioner and the Untited States urge, is to displace the judgments and decisions of the State and to substitute federal rules which decree how labor relations involving

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[7] *But see: California* v. *Taylor*, where in the face of state arguments to the contrary, the Court (arbitrarily, the *amicus* would urge) declared state employees to be railroad employees based apparently on the character of their work rather than the character and policies of their employer.

state employees of a state instrumentality will be conducted generally and with particular reference to the right of state employees to strike.

The *amicus* suggests that this kind and degree of federal interference in the "States' freedom to structure integral operations in areas of traditional government functions" and that this displacement of state powers "impairs the States' ability to function effectively in a federal system." 426 U.S. at 852 and 843. And further, that the principles of federalism applied by this Court in *National League of Cities* preclude such use of the federal authority to regulate commerce between the states.

Accordingly, the decision of the Court of Appeals should be affirmed.

II. The Relative Interests Of The Federal And State Governments In This Controversy Suggest That The Decision Of The Court Of Appeals Should Be Affirmed

A comparison of the interests of the national government with that of New York State in the controversy before this Court suggests that the federal interest is insubstantial. As a commuter facility, the LIRR has a minimal impact on interstate railroading. Moreover, the stated aim of the RLA is to avoid interruption to the operation of any carrier, 45 U.S.C.A. §151a (1972), and the application of the New York Taylor Law in the circumstances is likely to be equally effective to that end.

In contrast, the State's interest in controlling its employer-employee relations is paramount and goes to the essence of state authority. While the Petitioner may have a significant interest in this controversy, the federal government does not.

In the view of the *amicus*, the United States still aspires to set the wages, hours, labor relations and strike priv-

ileges of all the employees of all state and municipally owned and operated local mass transit systems. See, for example, the Department of Labor's ruling applying the federal Fair Labor Standards Act to all state and municipally operated local mass transit systems on the grounds that such activities are not "traditional" state functions and, therefore, do not fall within the purvue of *National League of Cities.* 29 C.F.R. §§ 775, 775.3(b)(3) (1980). This Court should not encourage such encroachments on state sovereignty.

In light of these considerations, the *amicus* urges this Court that the decision of the Court of Appeals should be confirmed.

CONCLUSION

The *amicus* suggests that the importance of the case at bar may be less what it signifies for the employees of the LIRR than what it may portend for the efficacy of the federal system of governance for the 1980's. As we have noted earlier, contemporary intergovernmental relations have become more pervasive, more intrusive, more unmanageable, more ineffective, more costly and above all, more unaccountable. These are realities to which governments at all levels must respond. These are trends which should not be encouraged by any court.

This Court, of course, from time to time has expressed its concern with the condition of the federal system. The recent comments of Justice Rhenquist and Justice Powell in *Virginia Surface Mining and Reclamation Association* immediately come to mind. In concurring with the Court's judgment reversing a holdng of the lower court that the Surface Mining and Reclamation Control Act of 1977, 30 U.S.C.A. §1251, *et seq.*, (Supp. 1981) was unconstitutional, among other reasons, as an unacceptable infringement on state sovereignty, Justice Powell observed:

> The Surface Mining Act mandates an extraordinarily intrusive program of federal regulation and control of land use and land reclamation, activities normally left to state and local governments. But the decisions of this Court over many years make clear that, under the Commerce Clause, Congress has the power to enact this legislation. 49 U.S.L.W. at 4664.

And Justice Rhenquist in his concurring opinion said:

> It is illuminating for purposes of reflection, if not for argument, to note that one of the greatest "fictions" of our federal system is that the Congress exercises only those powers delegated to it, while the remainder are reserved to the States or to the people. The manner in which this Court has construed the Commerce Clause amply illustrates the extent of this fiction. Although it is clear that the people, through the States, *delegated* authority to Congress to "regulate Commerce . . . among the several states." U.S. Const., Art. I, § 8, one could easily get the sense from this Court's opinions that the federal system exists only at the sufferance of Congress. *Id.* at 4665.

Justice Rhenquist concludes that given our dual system of government there still exist limits to the federal commerce power. But from the state view, those limits are a horizon that always recedes as it is approached by the federal government. Certainly, the *amicus* brief of the United States in the case at bar does not speak of limits. And the ruling of the Department of Labor, referred to earlier, which attempts to apply federal wage and hour laws to state-operated public transit systems, does not suggest that restraint or a respect for state sovereignty are readily perceived characteristics of our federal government.

In the view of the *amicus* unless more deference is accorded the states' role in our dual system, that role will succumb to the Commerce Clause. The national econo-

my of the 1980's is composed of many complex and highly interdependent elements; everything relates to everything else. Given that fact of economic life, it is always possible to argue, for example, that almost any act of city government — taxing, zoning, regulating, building — not only has a substantial effect upon the city economy, but in turn also affects larger economies and commerce between the states as well. Does it follow, then, that any act or function of municipal government is potentially subject to federal preemption under the Commerce Clause? What are the limits to this federal power?

As of today, conventional legal wisdom does not yet concede as a practical matter, limits to federal power under the Commerce Clause. Professor A. E. Dick Howard writing of the states and the Supreme Court put the matter succinctly:

> In modern times, generations of law students have been taught that there appeared to be no limits to Congress' commerce power — certainly, none that the Court would declare.
>
> Or so it seemed until the Court's decision in *National League of Cities* v. *Usery* in 1976. Conventional wisdom about the Court and the commerce clause was confounded when a majority of five justices ruled that Congress had exceeded its constitutional authority in subjecting state and local government employees to federal minimum wage and maximum hour requirements.[8]

In the judgment of the *amicus,* unless the holding of this Court in *National League of Cities* is reiterated and clarified, that fragile and tenuous barrier to federal intrusiveness and the federalization process under way

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[8] A. E. Dick Howard, *The States and the Supreme Court,* 45 (National Governor's Association 1980).

today will be swept away as a temporary aberration. The case at bar offers an opportunity to strengthen that barrier.

If, in fact, anything remains of the Constitutional concept of state sovereignty, it should be conserved by this Court. If there are virtues to be perceived in a federal arrangement in which the states and their instrumentalities are understood to have discrete roles and responsibilites and where federal accountability is distinguished from state accountability, these organizing principles should be reiterated and nurtured by this Court.

For the case at bar, the *amicus* urges this Court that the substance of state employer-employee relations, including such matters as hours, wages and the right to strike, should be left in the hands of states as a matter of sovereignty. And these personnel matters also should be left in the hands of states if the states are otherwise to be accountable for the performance and output of such employees. The effectiveness of the federal system in the 1980's and beyond requires no less. Accordingly, the decision of the Court of Appeals should be affirmed.

Respectfully submitted,

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